

Hon. Brian A Tsuchida

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOYCAT, INC., on behalf of itself and all others
similarly situated,

Plaintiff,

v.

Microsoft Corporation,

Defendant.

NO. 2:25-cv-00088-BAT

**PLAINTIFF'S MOTION TO
CONSOLIDATE RELATED CASES**

NOTE ON MOTION CALENDAR:
February 7, 2025

Pursuant to Federal Rule of Procedure 42 and LCR 42, Plaintiff Boycat, Inc., and the Plaintiff in the related case *Brodiski v. Microsoft Corporation*, Case No. 2:25-cv-00112-TL, respectfully request that the Court consolidate their actions into the first-filed action, *Boycat, Inc. v. Microsoft Corp.*, Case No. 2:25-cv-00088-BAT.

On January 14, 2025, Plaintiff Boycat Inc. filed a class action complaint against Microsoft Corporation alleging various claims arising from the Microsoft Shopping browser extension, which is programmed by Microsoft to systematically appropriate commissions that belong to online marketers by altering the checkout process and removing the tracking tags and affiliate marketing cookies associated with a purchase. Dkt. 1. On January 16, 2025, Jennifer Brodiski filed a similar class action, alleging virtually identical facts and claims to the *Boycat, Inc.* suit. Case No. 2:25-cv-00112-TL, Dkt. 1.

FRCP 42 permits consolidation of cases involving common questions of law or fact. Although consolidation is discretionary, FRCP 42(a) requires the Court to determine “Whether the specific risks of prejudice and possible confusion” from consolidation “were overborne by the risk of inconsistent adjudications . . . , the burden on parties, witnesses, and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.” *Campbell v. Boston Scientific Corp.*, 882 F.3d 70, 74 (4th Cir. 2018) (citing *Arnold v. Eastern Air Lines, Inc.*, 681 F.2d 186, 192 (4th Cir. 1982)).

Here, the two actions involve identical factual allegations, against the same defendant, regarding the Microsoft Shopping browser extension which Microsoft programmed to appropriate commissions belonging to online marketers. Plaintiffs in the *Boycat Inc.* and *Brodiski* actions agree that consolidation of their claims into one action for both pre-trial proceedings and trial is not only appropriate, but necessary to avoid duplicative efforts and potentially conflicting rulings.¹ These suits involve identical factual allegations and claims. To allow these cases to proceed as separate matters would waste judicial resources. Accordingly, Plaintiffs request the Court enter an order consolidating the two actions into the first filed case: *Boycat Inc. v. Microsoft Corp.*, Case No. 2:25-cv-00088-BAT.

DATED this 17th day of January, 2025.

TOUSLEY BRAIN STEPHENS PLLC

By: s/Jason T. Dennett
 Jason T. Dennett, WSBA #30686
 jdennett@tousley.com
 1200 Fifth Avenue, Suite 1700
 Seattle, Washington 98101
 Telephone: 206.682.5600/Fax: 206.682.2992

¹ The summons for Microsoft Corporation was issued in the *Boycat Inc.*, the same date of this filing, January 15, 2024, and has not yet appeared in either actions. Dkt. 2. Accordingly, it was not possible to confer with Defendant regarding its position on consolidation.

1 Gary M. Klinger (*pro hac vice* forthcoming)
2 **MILBERG COLEMAN BRYSON**
3 **PHILLIPS GROSSMAN, PLLC**
4 227 W. Monroe Street, Suite 2100
5 Chicago, IL 60606
6 Telephone: (866) 252-0878
7 gklinger@milberg.com

8 Alexandra M. Honeycutt (*pro hac vice* forthcoming)
9 **MILBERG COLEMAN BRYSON**
10 **PHILLIPS GROSSMAN, PLLC**
11 800 S. Gay St., STE 1100
12 Knoxville, TN 37929
13 Telephone: (866) 252-0878
14 ahoneycutt@milberg.com

15 *Attorneys for Plaintiff*
16
17
18
19
20
21
22
23
24
25
26